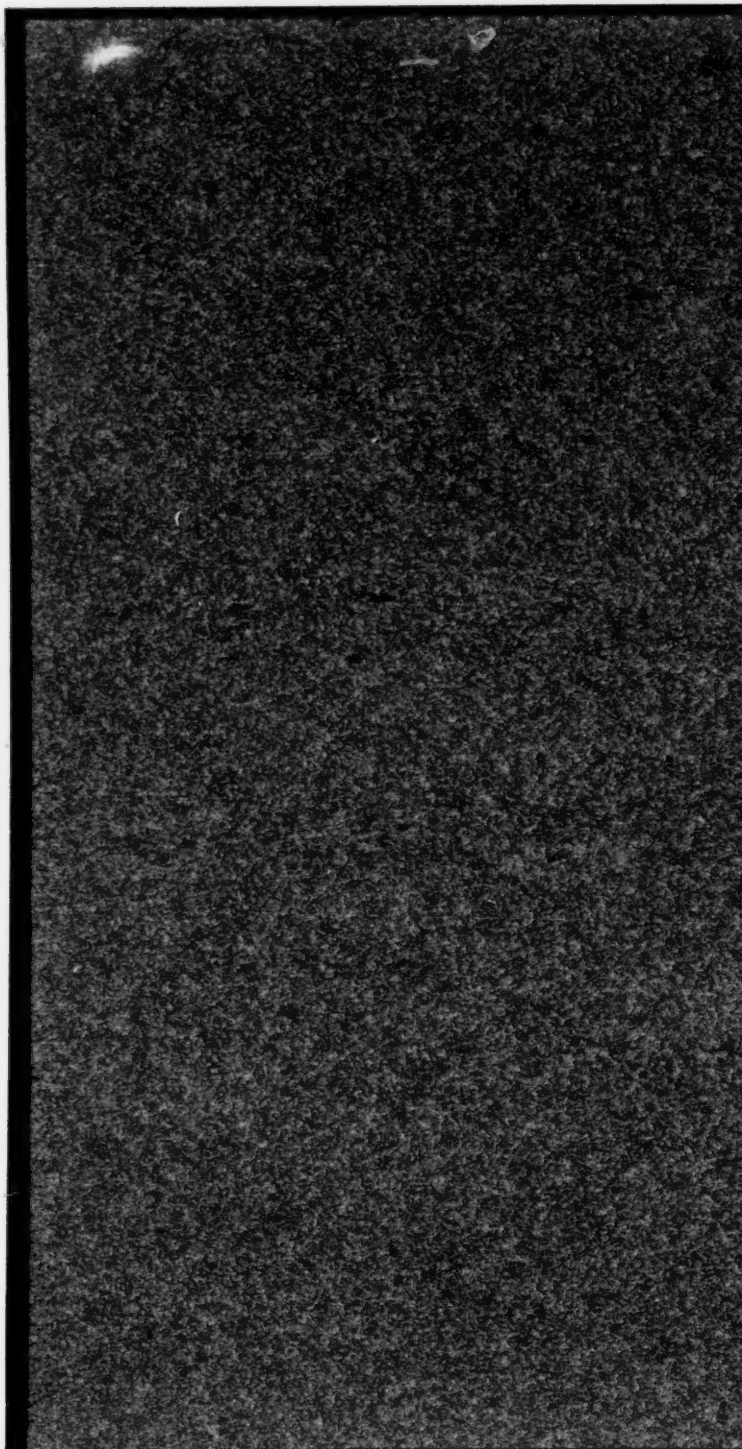

INDEX

	Page
Petition:	
Statement	2
Question presented	3
Statutes involved	3
Reasons for granting writ	5
Brief in support:	
I. Preliminary statement	7
II. Emergency Tariff Act of May 27, 1921	8
III. Intent of Congress	10
IV. History of the times	10
V. The testimony	25
Appendix	28

AUTHORITIES CITED

Cases:	
American Express Co. v. *United States*, 3 Ct. Cust. Appls. 475	23
Block v. *Hirsh*, 256 U. S. 135	24
Cadwalader v. *Zoh*, 151 U. S. 171	26
Carroll v. *United States*, #15 of the past term of this Court (not yet reported)	24
Church of Holy Trinity v. *United States*, 143 U. S. 457	10, 24
Duplex Printing Press Co. v. *Deering*, 254 U. S. 443	24
Hahn v. *United States*, 131 Fed. 1000	26
Heide v. *United States*, 2 Ct. Cust. Appls. 399	23
Levy Leasing Co. v. *Siegel*, 258 U. S. 242	24
Marcus Brown Co. v. *Feldman*, 256 U. S. 170	24
Ozawa v. *United States*, 260 U. S. 178	11, 26
Roosevelt v. *Maxwell* (Fed. Case 12034), 20 Fed. Cas. 1155	26
Rosenberg & Co. v. *United States*, 7 Ct. Cust. Appls. 213	24
Stone & Downer Co. et al. v. *United States*, T. D. 39473, G. A. 8613, 43 T. D. 141	10
Stone & Downer Co. et al. v. *United States*, 12 Ct. Cust. Appls. —, T. D. 40019, 45 T. D. 167	7, 8, 10
Tilge v. *United States*, 2 Ct. Cust. Appls. 129	23
United States v. *Anderson Co.*, 2 Ct. Cust. Appls. 350	23
United States v. *Hahn*, 135 Fed. 349	26
United States v. *Pfitsch*, 256 U. S. 547	24
United States v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310	24
United States v. *Thind*, 261 U. S. 204	26
United States v. *Union Pacific R. R. Co.*, 91 U. S. 72	10, 11
Willenborg v. *United States*, 6 Ct. Cust. Appls. 451	23
Wright & Graham Co. v. *United States*, 6 Ct. Cust. Appls. 528	24

Statutes:

	Page
Emergency Tariff Act of May 27, 1921, c. 14 (42 Stat. 9)	2, 8, 9
Par. 18, same act (42 Stat. 10)	2, 3, 4, 9, 11, 26
Par. 19, same act (42 Stat. 10)	2, 5
Judicial Code, sec. 195, as amended August 22, 1914, c. 267 (38 Stat. 703)	1
Tariff Act of March 2, 1867, c. 197 (14 Stat. 559)	20, 21
Tariff Act of March 3, 1883, c. 121 (22 Stat. 488, 508)	20, 21
Tariff Act of October 3, 1913, c. 16 (38 Stat. 114)	2
Par. 305, same act (38 Stat. 143)	11
Par. 650, same act (38 Stat. 164)	3, 4, 11, 18
Par. N, sec. 3, same act (38 Stat. 187)	2

Miscellaneous:

Hearings before Ways and Means Committee, December 16, 1920, Pt. IV, pp. 134, 135	22, 23
House Report No. 1, 67th Cong., 1st sess.—Report of Ways and Means Committee on H. R. 2435 (Emergency Tariff Act)	12, 16
Lewis's Sutherland Statutory Construction, vol. 2, sec. 363, p. 693	10
Original Emergency Tariff Bill, H. R. 15275, 66th Cong	18, 23
Senate Report No. 16, 67th Cong., 1st sess.—Report of Finance Committee (Emergency Tariff Act)	16

In the Supreme Court of the United States

OCTOBER TERM, 1925

THE UNITED STATES, PETITIONER
v.
STONE & DOWNER CO. ET AL. } No. ——

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS APPEALS, AND BRIEF IN SUPPORT THEREOF

The United States prays that a writ of certiorari issue to review the judgment of the United States Court of Customs Appeals in the above-entitled cause rendered March 23, 1925, T. D. 40784.

This petition is filed pursuant to section 195 of the Judicial Code, as amended August 22, 1914, c. 267, 38 Stat. 703.

On December 23, 1924, prior to the decision of the Court of Customs Appeals, the Attorney General duly filed in the office of the Clerk of the Court of Customs Appeals a certificate under section 195 that in his opinion this case is of sufficient importance to render expedient its review by this Court.

STATEMENT

Certain importations of wool, wool yarn, and wool cloth were entered at the port of Boston during the period from November 10, 1921, to July 3, 1922, and the collector of customs at that port levied duties thereon under the provisions of the Tariff Act of October 3, 1913, c. 16 (38 Stat. 114), as amended by the provisions of the Emergency Tariff Act of May 27, 1921, c. 14 (42 Stat. 9).

More specifically, the wool was classified and duty assessed thereon at the appropriate rate provided in paragraph 18 of the Emergency Tariff Act for:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools * * *.

The wool yarn and wool cloth were classified and assessed for duty under the specific provisions therefor in the Tariff Act of 1913, *supra*, and in addition thereto duty was levied at the rate provided in paragraph 19 of the Emergency Tariff Act on "manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value."

The importers, respondents, protested the action of the collector of customs pursuant to the provisions of paragraph N of section III of the Tariff Act of October 3, 1913 (38 Stat. 114, 187), claiming that the wool was entitled to exemption from duty

under paragraph 650 of the Act of 1913 (38 Stat. 164), and that the yarn and cloth were not subject to the additional duty provided in paragraph 19 of said Emergency Tariff Act.

The Board of United States General Appraisers sustained the protests of the importers, and on appeal to the Court of Customs Appeals the judgment of the Board of General Appraisers was affirmed.

THE QUESTION PRESENTED

The question presented is whether the importations of wool, which, it has not been disputed, are commonly and chiefly used in the fabrication of clothing, were properly classified and assessed for duty by the collector of customs under the provisions of paragraph 18 of the Emergency Tariff Act, *supra*, as:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

If the wool was properly classified under said paragraph 18 of the Emergency Tariff Act, it automatically follows that the yarn and cloth were subject to the additional duty provided in paragraph 19 of said act.

THE STATUTES INVOLVED

Paragraph 18 of the Emergency Tariff Act of May 27, 1921 (42 Stat. 9, 10), under which the wool was classified for duty:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools: Unwashed, 15 cents per pound; washed, 30 cents per pound; scoured, 45 cents per pound. Unwashed wools shall be considered such as shall have been shorn from the animal without any cleaning; washed wools shall be considered such as have been washed with water only on the animal's back or on the skin; wools washed in any other manner than on the animal's back or on the skin shall be considered as scoured wool. On wool and hair provided for in this paragraph, which is sorted or increased in value by the rejection of any part of the original fleece, the duty shall be twice the duty to which it would otherwise be subject, but not more than 45 cents per pound.

Paragraph 650 of the Tariff Act of October 3, 1913 (38 Stat. 114, 164), under which the court held the merchandise was entitled to free entry:

> Wool of the sheep, hair of the camel, and other like animals, and all wools and hair on the skin of such animals, and paper twine for binding any of the foregoing. This paragraph shall be effective on and after the first day of December, nineteen hundred and thirteen, until which time the rates of duty now provided by schedule K of the existing law shall remain in full force and effect.

Paragraph 19 of the Emergency Tariff Act (42 Stat. 10), under which the additional duty was levied upon the wool yarn and wool cloth:

> Wool and hair of the kind provided for in paragraph 18, when advanced in any manner or by any process of manufacture beyond the washed or scoured condition, and manufactures of which wool or hair of the kind provided for in paragraph 18 is the component material of chief value, 45 cents per pound in addition to the rates of duty imposed thereon by existing law.

REASONS FOR GRANTING THE WRIT

I

(*a*) The Court of Customs Appeals erred in holding that wool which is commonly and chiefly used in the manufacture of clothing is not "wool, commonly known as clothing wool."

(*b*) It disregarded numerous decisions of that court and of this Court in declining to review the history of the times or to consider various matters of judicial notice surrounding the enactment of the Emergency Tariff Act.

(*c*) It disregarded rules of construction common to the interpretation of customs law heretofore adopted and followed.

(*d*) It improperly applied testimony as to the *commercial* meaning of the term "clothing wool" to establish the *common* meaning of the term.

(*e*) It did not give due force and effect to the testimony introduced on behalf of the Government in aid of the common meaning of the term clothing wool.

II

The amount of refunds involved in this case is over $200,000, and approximately 4,000 protests against the decisions of the collector of customs covering approximately 14,000 entries are pending. These protests involve the refund of more than $10,000,000 (officially estimated), and their disposition will depend upon the decision in this case. Consequently this case is one of great public interest and of importance to the Treasury of the United States in its administration of the revenue laws and in disposing of the 4,000 suits above mentioned.

For these reasons it is respectfully submitted that the petition for a writ of certiorari should be granted.

WILLIAM D. MITCHELL,
Solicitor General.
WM. W. HOPPIN,
Assistant Attorney General.

JUNE, 1925.

BRIEF IN SUPPORT OF PETITION

I

Preliminary statement

As a preliminary statement it may well be pointed out that the dutiable status of similar importations of wool was originally presented to the Court of Customs Appeals in the case of *Stone & Downer Co. et al.* v. *United States*, 12 Ct. Cust. Appls. —, T. D. 40019, 45 Treas. Dec. 167. In that case the court was of the opinion (p. 178) that there was " no showing in this case that the term ' clothing wool ' has a common or ordinary use different from its use among commercial men."

We submit, however, that there was clear evidence in that case on behalf of the Government of a common meaning different from the commercial meaning as testified to by the witnesses for the importers. However, in view of the above statements of the Court of Customs Appeals, the Government in the instant case introduced the testimony of five additional witnesses, to supplement the evidence already introduced in the first case, in aid of the common meaning of the term " clothing wool " in contradistinction to the commercial or technical meaning of the term as claimed by the importers.

That case, like the instant one, was instituted by protests which were filed against the decisions of the collector of customs at Boston in classifying importations similar to those in the case at bar under the provisions of paragraphs 18 and 19 of the Emergency Tariff Act. The Board of General Appraisers (one member dissenting) overruled the protests of the importers in that case, but on appeal to the Court of Customs Appeals the judgment of the Board was reversed. Subsequently the trial in this case was had before the Board of General Appraisers on other protests relating to similar importations and while the record in the former case was incorporated and made part of the record herein, a great deal of additional testimony was introduced in the present case to substantiate that introduced by the Government in the former case, as already pointed out.

In the present case, made up as aforesaid, the Board sustained the claims of the importers upon the authority of *Stone & Downer Co. et al.* v. *United States, supra.* The Board's decision was subsequently affirmed by the Court of Customs Appeals, and it is now sought to have the judgment of affirmance reviewed by this Court.

II

The Emergency Tariff Act of May 27, 1921

The preamble to the Emergency Tariff Act of May 27, 1921 (42 Stat. 9), reads:

> An Act imposing temporary duties upon certain agricultural products *to meet present emergencies,* and to provide revenue; to regulate commerce with foreign countries; *to prevent dumping of foreign merchandise on the markets of the United States;* to regulate the value of foreign money; and for other purposes. (Italics ours.)

The title of the act and its declared purposes would seem to suggest that if any doubt arises as to the meaning of its provisions, inquiry should lead into an examination of the history of the times preceding its enactment and due consideration should be given to reports of Congressional committees, statements of chairmen of such committees, and other facts of which judicial notice may be taken in ascertaining the intent of Congress. This the Court of Customs Appeals failed to do, or, in any event, it declined to give due force and effect to such considerations in arriving at the intent of the provisions of the Act.

That the importers, respondents, regarded the meaning of the words:

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools

in paragraph 18 of the Emergency Tariff Act as of doubtful import, is indicated by the fact that they found it expedient to introduce a great deal of testimony from wool merchants regard-

ing the commercial or technical trade classification of the commodity. It will be noted that the language in paragraph 18 is addressed to the common rather than the commercial meaning of the words "clothing wool."

In the first case of *Stone & Downer Co. et al.* v. *United States, supra,* the Board of General Appraisers was divided two to one upon the meaning of the language of paragraph 18, *supra,* T. D. 39473, G. A. 8613, 43 Treas. Dec. 141. As pointed out, however, that decision was reversed by the Court of Customs Appeals in *Stone & Downer Co. et al.* v. *United States,* 12 Ct. Cust. Appls. —, T. D. 40019, 45 Treas. Dec. 167.

III

Intent of Congress

It is a cardinal rule of construction that a legislative act should be interpreted according to the intention of the legislature. This is so even though the intent when ascertained may not be consistent with the strict letter of the statute. Lewis' Sutherland Statutory Construction, vol. 2, sec. 363, p. 693, and cases cited. See also *Church of Holy Trinity* v. *United States,* 143 U. S. 457, 459.

IV

History of the times

In *United States* v. *Union Pacific R. R. Co.,* 91 U. S. 72, 79, this Court said:

> Courts, in construing a statute, may with propriety recur to the *history of the times* when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it. (Italics ours.)

See also *Ozawa* v. *United States*, 260 U. S. 178, 194.

It becomes important, then, in view of the purpose of the Act, as recited in its preamble, to consider the history of the times preceding its passage, in order to ascertain the intent of Congress.

For a number of years prior to the passage of the Emergency Act of 1921, wool of the sheep, hair of the camel "and other like animals," and all wools and hair on the skin of such animals, were granted freedom from duty. (Par. 650, Act of 1913, 38 Stat. 164.) During that period the only similar product upon which a duty was levied when imported into this country was the "hair of the angora goat, alpaca, and other like animals." (Par. 305, Act of 1913, 38 Stat. 143.)

In the presence of these facts, what was the object, purpose, or intent of Congress in framing paragraph 18 of the Emergency Act and carving out of the free list "wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca"? Much light is afforded in answering this question by reference to Congressional records and documents and to the history of the times immediately prior to the enactment

of May 27, 1921, and we shall take occasion briefly to enumerate some of the considerations which seem to have been uppermost in Congressional thought and whose influence actuated the legislation which culminated in the provisions of the Emergency Act involved in this proceeding.

Following the close of the World War in the fall of 1918, there was a surplus of the world's stock of raw wool, and in 1920 there seems to have been a general decline in wool prices—financial stringency, industrial stagnation, and unemployment being contributing causes. Fully recognizing the principle that agriculture is the fundamental basis of prosperity in this country, Congress, in order to avoid the possible destruction of industries requiring years to develop and to avert serious financial difficulties then impending, resorted to an emergency tariff as a temporary means of relief pending the enactment of a permanent bill. As a result the Emergency Tariff Act was placed upon the statute books May 27, 1921. In reporting the bill (H. R. 2435) to the House of Representatives, Mr. Young, of the Committee on Ways and Means, submitted a report, from which we quote the following (H. Report No. 1, p. 2, 67th Cong., 1st sess.):

> One of the most serious obstacles to the revival of industry is the paralysis of agriculture. Title I of this bill, to protect certain farm products, is submitted to Congress for the welfare of the nation as a

whole. It is not sectional. It is not for the benefit of one class, because its passage will be for the good of all. The purchasing power of farmers has been in large part destroyed and must be restored before good times can be hoped for.

While it is true that we are in the grip of a nation-wide industrial and business depression, which has distressed many, impartial observers are of the opinion that agriculture is the hardest hit of all. In addition to abnormally low prices, and in some instances no price at all, practically everything the farmers buy is from 50 to 100 per cent higher than pre-war levels.

The consuming public and the commercial public have an absolute and definite interest with the farmer in helping him to make cost of production and a fair profit.

The primary interest of the consuming public in the farmer is that he keep on producing food. The farmer will do that only if he makes a profit on his productions. If he must sell his commodities below cost of production he must go out of business or lower his standard of living to such an extent that he is a public menace. In either event the consuming public will suffer.

At page 5 the report reads in part as follows:

The prosperity of this country is based primarily on agriculture. If the American public permits class after class of American farmers to be driven out of their industries by competition from one source or

another, the whole country will be impoverished gradually but surely. The farmer will not be the only sufferer; the whole public will go down with him. This is the teaching of history.

The sooner the average man realizes that his interest is absolutely inseparable from that of the agricultural producer, the sooner will the entire country be on a more prosperous footing.

With specific reference to the subject of wool, we quote as follows from pages 7 and 8 of said report:

(1) In previous years the average production of wool in the United States was 314,000,000 pounds and average imports 203,000,000 pounds.

During the war imports increased in response to increased manufacturing to about 445,893,000 pounds in 1919, and declined to 259,618,000 pounds in 1920.

(2) Both importation and consumption of wool have decreased since May. However, there has been a large increase for January and February, 1921. Importations in recent months appear to be speculative, in anticipation of tariffs.

(3) The stocks of wool on hand were large when the price slump came last May. To the stocks on hand was added the new clip of 280,000,000 pounds.

(4) The accompanying tables show the wool supply in sight to be near 1,000,000,000 pounds. The normal consumption is

about 600,000,000 pounds, with about 400,000,000 pounds carried as stock. A year's supply is in sight at normal consumption. At the present rate of consumption (about two-thirds normal) the supply would be sufficient for a year and a half.

(5) The effect of an embargo or high tariff would be to gradually increase the prices.

The justification for an emergency tariff is:

(*a*) A fundamental industry that it takes years to develop is facing ruin.

(*b*) The prosperity of large numbers of people, not sheep growers, is dependent on the sheep industry. Hence, merchants and bankers who have made large advances to sheep producers are in serious financial trouble and favor a wool tariff.

(*c*) At present the supply of wool in the United States is approximately 650,000,000 pounds, of which 175,000,000 pounds is held by the producers. With the coming 1921 wool clip the amounts controlled by producers would be approximately 450,000,000 pounds, while the dealers would hold approximately 500,000,000 pounds. Therefore, the benefit derived from a tariff would be equally divided between producers and the dealers and manufacturers. Undoubtedly any tariff on wool would reflect in the price of finished goods and the charge passed on to the consumer.

(*d*) Wool dealers who purchased wool stocks at higher prices than now obtain are

in serious financial straits and would be directly benefited. Forced liquidation on the part of wool dealers would make the present bad situation worse and break a trade organization of value to agriculture.

(*e*) It can be shown that the price of wool is so small a factor in the ultimate cost of manufactured goods that no large burden need be placed on the consuming public. [Italics ours.]

The foregoing remarks quoted from the report which accompanied the Emergency Tariff Bill when it was committed to the Committee of the Whole House on April 13, 1921, present a very clear picture of the distressing commercial, financial, industrial, and economic conditions which prevailed at that time, and, as indicated, the Emergency Act was enacted as a temporary measure to relieve that situation. This report, in so far as it related to wool and certain other articles, was adopted without change by the Senate Finance Committee in reporting the bill to the Senate. (Senate Report No. 16, 67th Cong., 1st sess.)

At the time the above report was submitted all wool was on the free list. Not only had vast stocks of wool accumulated in this country, but the 1921 domestic wool clip was in anticipation as well as tremendous shipments from foreign countries. Congress therefore appreciated the necessity of immediate legislative action to forestall serious embarrassment to wool growers and dealers in this

country, as shown to exist in Mr. Young's report. Accordingly the Emergency Tariff Act was enacted prescribing rates of duty on "wool, commonly known as clothing wool," the only specific exemption being "such wools as are commonly known as carpet wools." This was urgent in order to avert forced liquidations, as it appears from the report that in many cases merchants and bankers who had made large commitments to sheep producers were in serious financial trouble and favored a wool tariff. As the United States is not a carpet-wool producing country, it naturally and obviously follows that the acute situation confronting merchants and bankers was created through loans on stocks of wool other than carpet wool. To relieve this situation Congress immediately enacted remedial legislation, as expressed in paragraph 18 of the Emergency Tariff Act. It would be absurd to contend, therefore, that the intent of Congress was not to protect the large body of domestic wool producers, and that intent was clearly expressed in the report which accompanied the Emergency Tariff Bill. If the importers' contention were upheld, the very purpose of the legislation would be defeated, as it would result in leaving the large body of domestic producers of wool of the combing grade unprotected, and at the same time protecting the small class of those producing wool of the clothing grade.

From the foregoing it is obvious that Congress deliberately intended to prescribe a protective rate of duty upon all wool, and hair of the camel, angora goat, and alpaca (except carpet wool and certain skin wools), which under paragraph 650 of the Act of 1913 were exempt from duty. Consequently, we find in paragraph 18 of the Emergency Act that Congress has apparently divided wools into two classes, namely *clothing wools* and *carpet wools*, specifying that the former shall be classified at 15 cents or 30 cents or 45 cents per pound, according to condition, while carpet wools should still remain on the free list.

It will be recalled that the original emergency tariff bill, H. R. 15275, which was passed by the House and Senate, was vetoed by President Wilson a few days before the end of the 66th Congress; and as the expression "wool, commonly known as clothing wool," appearing in paragraph 18 of the Emergency Tariff Act (H. R. 2435) of May 27, 1921, is in language identical to the corresponding provision in the original emergency bill, it is profitable to consider the debates and antecedent history of the original bill as well as the one which was finally enacted into law.

An examination of the Congressional Record, wherein the progress of the emergency bill in its various stages in the House and Senate is shown, clearly indicates that Congress was legislating with respect to two grand divisions of wool, namely, clothing wool and carpet wool, which

terms collectively embraced all wools. References to the Congressional Record are contained in the Appendix to this brief, page 28.

In the trial court the importers, respondents, introduced a great deal of testimony tending to establish that in trade and commerce wools commonly used in the manufacture of clothing are recognized as (1) clothing wool, and (2) combing wool; that the term "clothing wool," as above expressed, relates to the short-fibered wools which are not of sufficient length to be combed, and which are utilized in the woolen system of manufacture; that combing wools are wools of relatively long staple which are combed in the process of manufacture and used in the worsted system.

The Government contends, however, that the so-called combing wool is merely a grade or kind of clothing wool and is in fact within the common acceptation of the term known as "clothing wool."

In its opinion the lower court remarked, T. D. 40784, pp. 48, 53, No. 15, 47 Treas. Dec. — (not yet reported):

> In our former opinion we have set out various expressions used in previous tariff acts from March 2, 1867, to 1921, when Congress was referring to wool. The terms used show that the framers of the paragraphs knew the wool business and knew the meaning of the terms used. The words "clothing wools" were frequently referred to, and finally "clothing wools" were re-

ferred to as Class I. The trade understood and the administrators of the act understood what "clothing wools" were and what Class I was. They used the same words with the addition of the words "commonly known" in the Emergency Tariff, and now the Government contends that they used the words in a different sense and that, even if they did use the words "clothing wool" to describe a short-stapled wool in the many preceding acts, in the emergency tariff law they changed the meaning and used the words in a different sense.

The record demonstrates that the importations of wool here in question consist of Australian, New Zealand, and South American (Buenos Aires) wool, all of which contain Merino blood. All of these wools were in the Tariff Acts from March 2, 1867, to 1921 (whenever wool was a dutiable commodity), specifically designated in the tariff either as "Class I" or, as in the Tariff Acts of 1867 and 1883, as "Class I, Clothing."

For convenience, the provisions of the Tariff Acts of 1867 and 1883 are here set forth.

The Tariff Act of March 2, 1867, c. 197 (14 Stat. 559), reads:

CLASS 1—CLOTHING WOOL

That is to say, merino, mestiza, metz or metis wools, or other wools of merino blood, immediate or remote; down clothing wools, and wools of like character with any of the preceding, including such as

have been heretofore usually imported into the United States from Buenos Ayres, New Zealand, Australia, Cape of Good Hope, Russia, Great Britain, Canada, and elsewhere, and also including all wools not hereinafter described or designated in classes two and three.

The Tariff Act of March 3, 1883, c. 121 (22 Stat. 488, 508), is in identical language.

Consequently, such wools as are here under consideration had acquired a well-known designation as "clothing wools" based on blood rather than on length of staple. The apparent reason why such wools have also come to be technically known as combing wools is because of the great development in the manufacture of combing machinery by which a great many wools which years ago were more commonly utilized in the woolen system of manufacture are now well adapted for the worsted system. But whether the wools are carded or combed in being prepared for use in the manufacture of clothing, it would seem that they are properly and definitely described as clothing wools.

While it is true that the Tariff Acts of 1867 and 1883 provided for "Class I, Clothing Wool," they also provided for "Class II, Combing Wools," the latter embracing a few long-stapled wools of English blood, together with the hair of the alpaca, goat, and other like animals. As we have pointed out before, however, many wools, including Aus-

tralian, New Zealand, South American wools, and other wools of Merino blood, immediate or remote, such as are involved in this proceeding, remained under the heading "Class I, Clothing," even though they were wools of the combing grade, as shown by the record herein.

The distinctions between Class I and Class II, above referred to, were primarily *blood* distinctions, which were entirely dropped in the preparation of the Emergency Tariff Act.

It is clearly indicated in Part IV of the Hearings before the Committee on Ways and Means, House of Representatives, dated December 16, 1920, that wools of "Class I, Clothing," and "Class II, Combing," as designated in earlier tariff acts, were designed to be consolidated in the Emergency Tariff Act and provided for in the provision for "wool, commonly known as clothing wool." We quote as follows from pages 134 to 135 of the above "hearings":

> The CHAIRMAN. For the purposes of information, under the Payne and Dingley tariff laws, the duty on carpet wools was 3 or 4 cents a pound, as I remember it—3 cents, I believe—when valued at not less than 7 cents. Maybe it was a higher price than that, perhaps 15 cents. And when valued at more than 15 cents a pound, then 7 cents a pound. Those were the rates provided for in the Dingley and the Payne tariff laws. I can get it accurately for you, but that is about it. The 12 cents was the

> duty at that time on wools of the second class; your grease wools and fine wools only paid a duty of 10 cents. *Now, Mr. Green puts* both class 1 and class 2 wools at 12 cents when *in the grease*. [Italics ours.]

Reference is here made to the history of the original emergency bill (H. R. 15275), which was vetoed by the President, for the reason that the language then adopted, "wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools," was subsequently enacted into law without change (except as to rate) in paragraph 18 of the Emergency Tariff Act of May 27, 1921. The above quotation shows clearly the purpose to include all but carpet wools in the dutiable class of paragraph 18.

The reports of the Court of Customs Appeals are replete with cases in which, apparently, that court has been largely, if not in fact expressly, guided by its references to the Congressional Record, Tariff Hearings, Notes on Tariff Revision, etc., in reaching its conclusions. See, for example, *Tilge* v. *United States,* 2 Ct. Cust. Appls. 129; *United States* v. *Anderson Co.,* 2 Ct. Cust. Appls. 350, 352, 353; *Heide* v. *United States,* 2 Ct. Cust. Appls. 399, 402, 403; *American Express Co.* v. *United States,* 3 Ct. Cust. Appls, 475, 478; *Willenborg* v. *United States,* 6 Ct. Cust. Appls. 451, 454, 455; *Wright & Graham Co.* v. *United States,* 6 Ct. Cust.

Appls. 528, 529, 530, 531; *Rosenberg & Co.* v. *United States*, 7 Ct. Cust. Appls. 213.

In this Court numerous cases may be cited wherein its deliberations and conclusions seem to have been greatly aided by consideration of Congressional committee reports and the statements of chairmen of committees. See, for example, *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474.

See also *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *United States* v. *St. Paul, M. & M. Ry. Co.*, 247 U. S. 310, 318; *United States* v. *Pfitsch*, 256 U. S. 547, 550, 551; and *Carroll* v. *United States*, No. 15 of the past term of this Court (not yet reported).

As the case at bar is dealing specifically with an emergency tariff act, the attention of the Court is respectfully invited to its decisions relating to the Emergency Housing Laws, namely: *Block* v. *Hirsh*, 256 U. S. 135; *Marcus Brown Co.* v. *Feldman*, 256 U. S. 170; *Levy Leasing Co.* v. *Siegel*, 258 U. S. 242.

In view of the foregoing authorities it is respectfully submited that the court below in declining to give appropriate force and effect to the history of the times and other matters of judicial notice, failed to properly interpret the provisions of paragraph 18 of the Emergency Tariff Act, or to arrive at its obvious meaning and intent.

On the contrary, its conclusions would result in depriving the paragraph of the meaning intended

by its designers and render ineffective the remedy prescribed by Congress for the emergency. In so doing the court below not only departed from rules of construction followed in many earlier cases, but departed as well from principles of construction frequently followed by this Court.

V

The testimony

Furthermore, the court improperly applied the testimony introduced on behalf of the importers with respect to the commercial or technical meaning of the term "clothing wool" in arriving at its *common* meaning. It is not disputed that wool merchants, in sorting and grading fleeces, separate them into grades according to length of fiber, the short fibered wools being carded for use in the woolen system and the long fibered wools being both carded and combed for use in the worsted system; but nevertheless whether the different sorts be technically regarded as carding, clothing, or combing wools, they are in substance, in fact, and in name clothing wools within the popular conception of that term. A great deal of testimony was introduced on behalf of the Government from wool producers who have had wide experience in the great wool growing sections of the United States, and from those sources we have clear evidence of the common meaning of the term "clothing wool."

With reference to the *common* meaning of terms, note: *United States* v. *Thind*, 261 U. S. 204; *Ozawa* v. *United States*, 260 U. S. 178.

That the commercial meaning of a term used in tariff statutes will not prevail where Congress has already manifested a contrary intention is well settled. *Cadwalader* v. *Zeh*, 151 U. S. 171, 176; *Roosevelt* v. *Maxwell* (Fed. Cas. 12034), 20 Fed. Cas. 1155; *Hahn* v. *United States*, 131 Fed. 1000, affirmed on appeal without opinion in *United States* v. *Hahn*, 135 Fed. 349.

Furthermore, the provision in paragraph 18 of the Emergency Tariff Act in express terms is addressed to the *common* rather than the *commercial* meaning of the term "clothing wool."

It is submitted, therefore, that the testimony introduced in this case on behalf of the Government in aid of the common meaning of the term "clothing wool" compelled a finding by the court below that the importations in question were properly classified for duty by the collector of customs under the provision—

> Wool, commonly known as clothing wool, including hair of the camel, angora goat, and alpaca, but not such wools as are commonly known as carpet wools.

It is worthy of notice that hair of the camel, angora goat, and alpaca, as shown by the record, are long-fibered products which, like the wools here in question, are usually combed in preparing them for their ultimate use.

CONCLUSION

In view of the foregoing it is respectfully submitted that the writ herein applied for should be granted.

WILLIAM D. MITCHELL,
Solicitor General.

WM. W. HOPPIN,
Assistant Attorney General.

CHARLES D. LAWRENCE,
Special Attorney,
Of Counsel.

JUNE, 1925.

APPENDIX

The following references to the Congressional Record are here set forth.

Remarks in House on Bill H. R. 15275, imposing duties on certain agricultural products—Original Emergency Bill, vetoed by President Wilson (references are to the Congressional Record, vol. 60, 66th Cong., 3d sess.): Pages 594, 618 (the bill); 625 (Kinkaid), 631 (Blanton), 638 (Green), 642 (Quin), 648 (Smith, Mich.), 663 (Rainey), 664 (Fordney), 665 (Green), 3488 (Disagreement to Senate Bill), 3973 (Conference Report), 3975 (Conference Report), 3982, 4566, 4573, 4574, 4575, 4576, 4578, 4670, 4702, 4742.

Remarks in Senate, same bill: Pages 736, 738 (Smoot); 743, 1294, 1673, 2005, 2054, 2063 (Harrison); 2104, 2314 (Smoot); 2376 (Harrison); 2378 (Lodge); 3179 (Walsh); 3239, 3242 (Simmons); 3247 (Table of Comparison); 3941, 4023 (Conference Report); 4024, 4034 (Conference Report); 4039 (Reed).

Amendments in Senate: Pages 808, 1086, 1136, 1238, 1294, 1543, 1674, 1727, 2047, 2104.

Conference Report (H. Report 1359): Pages 3824, 4023.

Estimated Receipts Emergency Act: Page 648.

"Comparison of Rates" (Simmons): Page 3247.

The following references also are made to the original Emergency Bill, H. R. 15275, appearing

in the Congressional Record, Volume 60, Part I, pages 1 to 1084, 66th Congress, third session.

House: Page 625 (Kinkaid); 627 (Griffen); 631 (Blanton); 638 (Green); 642 (Quin); 648 (Smith); 663 (Rainey); 664 (Fordney); 665 (Olney); 665 (Hudspeth); 665 (Green).

Senate: Page 738 (Smoot); 738 (Harrison); 738 (Reed).

Remarks on final Emergency Bill, H. R. 2435, and comparison of duties between the Emergency Bill and the Payne-Aldrich Bill, Cong. Rec., vol. 61, p. 1289, 67th Cong., 1st sess.:

Conference Report on bill (H. R. 2435) imposing temporary duties on certain merchandise (H. Report 79): Pages 1563, 1578, 1589.

Remarks in House on House Bill (H. R. 2435) imposing temporary duties on certain merchandise: Pages 217, 252 (the bill), 268 (old bill), 272 (Minority Report), 327, 1430, 1632, 1635.

Remarks in Senate (same): Pages 910, 1018, 1066, 1097, 1098, 1122, 1148, 1149, 1172, 1244, 1253, 1288, 8436.

Statistics relative to estimated revenue, Emergency Bill: Page 1068.

Views of Minority: Page 269.

Amendment in Senate, Tariff on Wool: Page 1165.

Remarks in Senate on bill (H. R. 8643) to extend Emergency Tariff Act: Page 7538.

Statistical History of Tariff Acts from 1870 to 1920: Page 8421.

Statistics: Pages 1789, 3844.

Text of Booklet "Tariff Information, 1921": Page 3849.

Text of Emergency Act: Page 7544.

Note also the following publications:

"The Wool Growing Industry," prepared by the United States Tariff Commission, 1921, page 428.

The Report of the Tariff Board on Schedule K of the Tariff Law on "Wool and Manufactures of Wool," Vol. 1, part I, page 53, 1921. Also Vol. 2, part 2, pages 299, 382, 413.

Summary of Tariff Information, 1921, page 952.

○